



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,208	04/13/2001	G. Thomas Wolf	0022.010001	3950

42082 7590 01/22/2007  
CONWELL LLC  
2138 PRIEST BRIDGE COURT  
SUITE 4  
CROFTON, MD 21114

EXAMINER
----------

MENDOZA, MICHAEL G

ART UNIT	PAPER NUMBER
----------	--------------

3734

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/834,208

Applicant(s)

WOLF, G. THOMAS

Examiner

Michael G. Mendoza

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-10, 12-15, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-10, 12-15, 17, and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 16 June 2006 have been fully considered but they are not persuasive. The applicant argues that the examiner fails to address the limitations of claim 5, 7, 8, and 10. The examiner disagrees. As to the argument that the examiner does not address a pair of elastic band, the combination of Hudson and Bledstein teaches the used of a pair of elastic band. Hudson teaches a single band, while Bledstein is provided with a pair along with motivation for using a pair of bands that wrap around the ear. Furthermore, it is well know in the art of masks that the use of a pair of bands is an alternative for one band.

2. As to the argument that the examiner does not address that both ends of each pair of bands are affixed at points of attachment to each of both sides, the bands extendible to loop over and around each ear of the patient, the combination of Hudson and Bledstein teaches both ends of each pair of bands are affixed at points of attachment. Bledstein shows in FIG. 2 and FIG. 5 one of the pair of bands, each end of the particular band attached to a mask. In FIG. 1, FIG. 4, and FIG. 6 Bledstein shows one of the bands of the pair looping over an ear. Inherently, the second band of the pair would be configured the same way on the opposite side.

3. As to the argument that the examiner does not address that the bands are adjustably securable to the patient by pulling the ends anteriorly through the points of attachment, the combination of Hudson and Bledstein teaches that the bands are adjustably securable to the patient by pulling the ends anteriorly through the points of

Art Unit: 3734

attachment. Hudson teaches that the point of attachment for a band is adjustable by pulling. The modification of Hudson for the use of ear loops would still make the make adjustable though the point of attachment. Obviously, there would be more points of attachment with the same adjustable configuration of Hudson to accommodate the ends of the bands taught by Bledstein.

4. As to the argument that there is no motivation to combine Hudson and Bledstein, the prior art of both Hudson and Bledstein are in the same field of endeavor. The field being face masks and a means for attaching to a user. The motivation of using the bands of Bledstein as an alternative to the band of Hudson being making the mask easy to put on and to fit snugly without interfering with hairdo, glasses, goggles, or hat. The applicant argues that this motivation is not applied to Bledstein, but to Maryyanek. The examiner disagrees. The same statement is used specifically for the device of Bledstein on col. 6, lines 10-17. The applicant also argues that the bands of Bledstein are permanently attached. The primary reference teaches otherwise. Hudson teaches adjustable attachment. As long as at least one end of the ear loop goes through the adjustable attachment the strap would still be adjustable.

***Claim Rejections - 35 USC § 103***

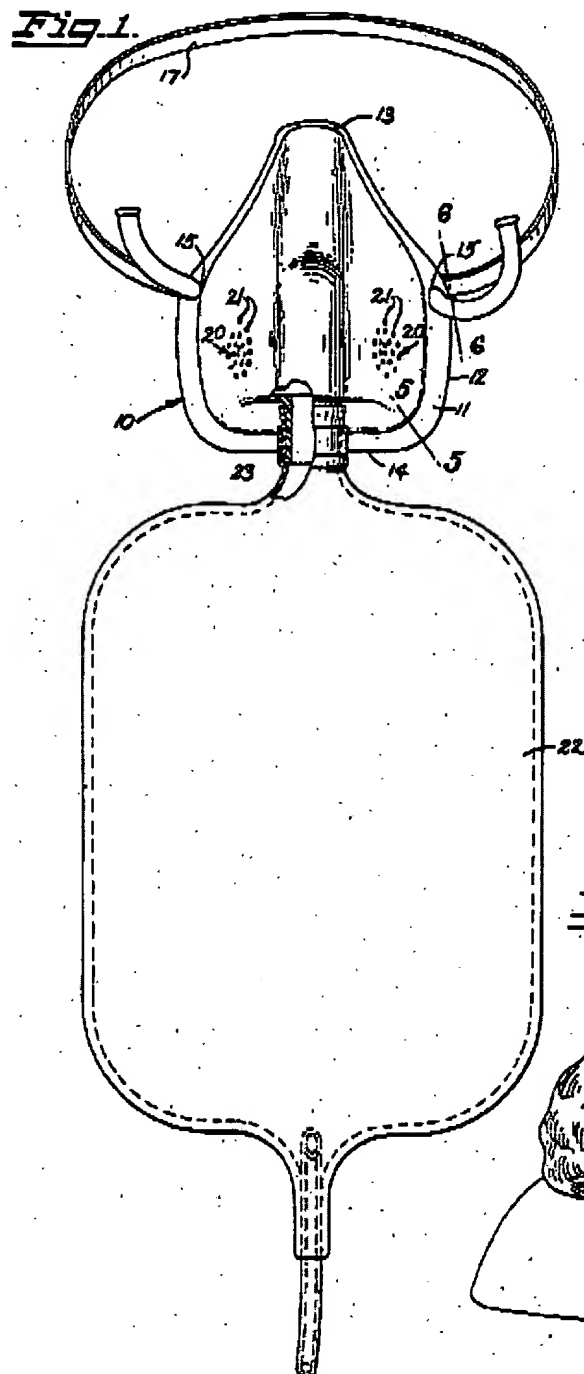
5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3734

6. Claims 5-10, 12-13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hudson 2843121 in view of Bledstein 5701892.

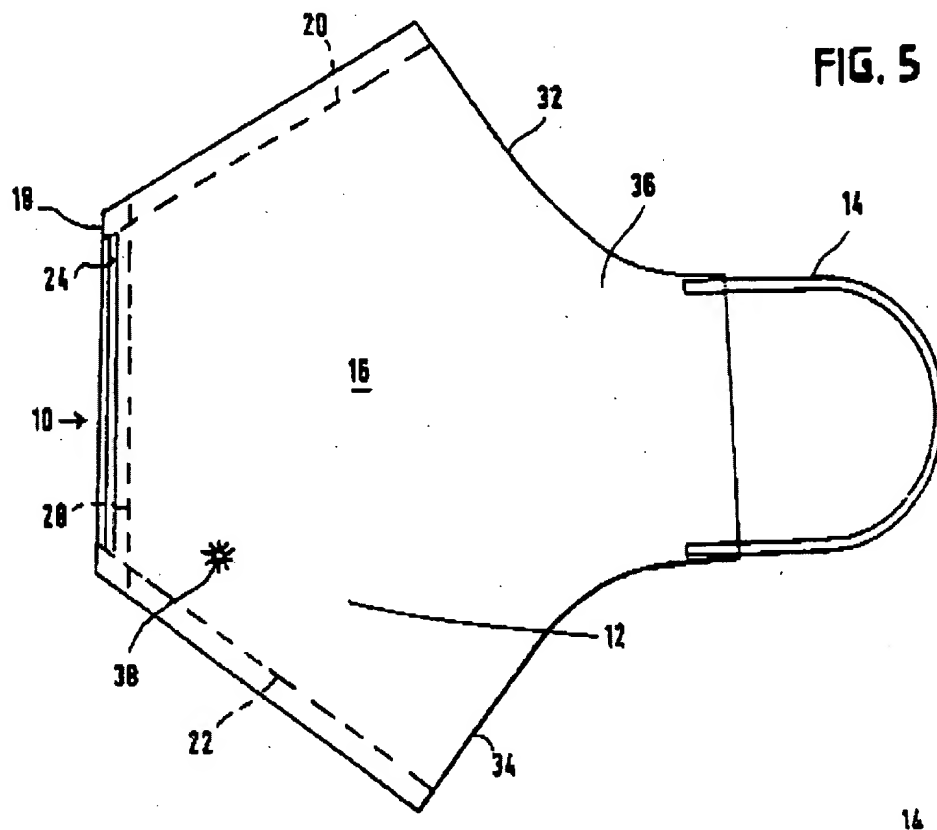
7. As to claims 5, 7, 8, and 10, Hudson teaches an oxygen mask 10 having a means for being secured over the nose and mouth of a patient comprising: an elastic band, points of attachment 15 on both sides of the mask, and the elastic band securable to the patient by pulling the ends anteriorally through the points of attachment (col. 2, lines 27-31). It should be noted that Hudson fails to teach a pair of bands extendible to loop over and around each ear of the patient.



8. Bledstein teaches a mask that uses a pair of bands affixed at four points of attachment and extendible to loop over and around each ear of a patient. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention

Art Unit: 3734

was made to replace band 17 with ear loops of Bledstein to prevent entanglement of bands in a user's hair, glasses, or hat and to make it easy to put on (col. 2, lines 32-33 and col. 6, line 10-17).



9. As to claim 6 and 9, Hudson/Bledstein teaches wherein the elastic bands are affixed at four separate points on the mask.

10. As to claim 14, Hudson teaches an oxygen mask for use on a patient, the oxygen mask comprising: a face mask molded from plastic comprising a larger part of the mask defined by a face-conforming periphery, a rim with an enlargement configured to substantially conform to the contour of the nose bridge of the patient; a first side portion and an opposite second side portion configured to substantially conform to contour of the face of the patient, and a lower portion configured to substantially conform to

Art Unit: 3734

contour of the face of the patient below the mouth so as to form a breathing chamber about the mouth and nostrils of the patient (see figures). It should be noted that Hudson fails to teach a pair of bands extendible to loop over and around each ear of the patient.

11. Bledstein teaches a mask that uses a pair of bands affixed at points of attachment and extendible to loop over and around each ear of a patient. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace band 17 with ear loops of Bledstein to prevent entanglement of bands in a user's hair, glasses, or hat and to make it easy to put on (col. 2, lines 32-33 and col. 6, line 10-17). Hudson/Bledstein teaches wherein the elastic bands are affixed at four separate points on the mask.

12. As to claim 15, Hudson/Bledstein teaches the oxygen mask of claim 14, teaches wherein both ends of the straps is adjustably connected to the face mask (col. 2, lines 20-31).

13. As to claim 17, Hudson/Bledstein teaches the oxygen mask of claim 14, which additionally comprises an adapter plug 23.

14. Claims 12, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hudson/Bledstein as applied to the claims above, and further in view of Laanen et al. 4865027.

15. As to claims 12, 13, and 18, Hudson/Bledstein teaches the mask of claims 5 and 8. It should be noted that Hudson/Bledstein fails to specifically teach the use of a flap valve.



Art Unit: 3734

16. Laanen et al. teaches a mask with a common valve (20) to vent exhaled gases. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a valve to allow exhaled air to be forced out to the atmosphere (col. 4, lines 58-60).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hudson/Blestein as applied to the claims above, and further in view of Dyrud et al. 5819731.

17. Hudson/Blestein teaches the oxygen mask of claim 14. It should be noted that Hudson fails to teach wherein one end of each of the straps is adjustable connected to the face mask, and the second end of the strap is permanently attached.

18. Dyrud et al. teaches a mask with a common one end of each of strap is adjustable connected to a face mask, and the second end of each strap is permanently attached. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the fastener 34 to fixedly attach the straps to prevent loss of the straps.

### ***Conclusion***

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3734

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### **Contacts**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MM



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER